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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,408	02/14/2006	Christophe Pierre Antoine Marie Girard	403416/WEINSTEIN	4583
23548 7590 02/08/2008 LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960			EXAMINER BATTULA, PRADEEP CHOUDARY	
			ART UNIT 3722	PAPER NUMBER
			MAIL DATE 02/08/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/539,408

Applicant(s)

GIRARD, CHRISTOPHE PIERRE  
ANTOINE MARIE

Examiner

Pradeep C. Battula

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 7, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. Claims 1, 2, 4, 5, 7, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton et al. (Eaton; EP 0018004A2) in view of Gallot (FR 2 792 573).

In regards to Claim 1, Eaton discloses a filing folder 1 comprising: a cover including an anterior sheet 4 and a posterior sheet 2 (Page 5, Lines 1 – 2; Page 6, Lines 1 – 3; Figure 1, Items 2, 4); a binding 9 joining the anterior and posterior sheets (Page 6, Lines 1 – 6; Figures 1 & 4A, Item 9); wherein a first sheet of the anterior and posterior sheets includes: a first flap 6 along one of lower and upper edges of the first sheet (Page 6, Lines 7 – 12; Figure 2A, Item 6), and a second flap 8 (considered a flap since it can flex a certain degree) along a lateral edge of the first sheet (Page 7, Lines 11 – 16; Figure 2A, Item 8), the first being foldable towards and away from an interior side of the first sheet for storing and accessing the contents of the file folder (Page 7, Lines 1 – 10; Figure 2B, Item 6).

Eaton does not disclose notebook pages securely connected to the binding, and the first and second flaps being foldable towards and away from an interior side of the first sheet for storing and accessing notebook pages that are, respectively, securely linked to the binding, by folding the first and second flaps successively, one on top of the other, toward the interior side of the first sheet, with the notebook pages under the first and second flaps folded towards the interior side of the first sheet, and by unfolding the flaps away from the interior side of the first sheet and notebook pages stored under the first and second flaps.

Gallot discloses a document filing folder with a sheet having flaps 12, 13, 16, and 17 (Figure 1, Items, 12, 13, 16, 17; Figures 2 & 3, Item 13) wherein the filing folder has an anterior sheet 2 (Figure 1, Item 2) and a posterior sheet 1 (Figure 1, Item 1) wherein the flaps are hinged and not in permanent position and can be folded and unfolded (Attached Abstract) and wherein the flaps are folded one on top of another in order to hold a stack of sheets in place (Figures 1 & 3) and accessing the sheets would be inherently done by unfolding the flaps. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Eaton with all flaps being movable and folding on top of another in order to allow for the flaps to accommodate stacks of sheets having different sizes. Furthermore it is well known in the art that ring mechanisms as disclosed in Eaton are used to bind sheets of paper.

With respect to how the pages are stored by unfolding the flaps away from the interior side of the first sheet and notebook pages stored under the first and second

flaps; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

In regards to Claim 2, as applied to Claim 1, Eaton modified by Gallot further discloses wherein the first sheet with the flaps is the posterior sheet (Figure 1 – Eaton; Figures 1 – 3 – Gallot).

In regards to Claims 4 & 7, as applied to Claims 1 & 2, Eaton modified by Gallot further discloses a document filing folder with a closing means including a rubber band 4 attached to one of the anterior sheet 2 and the posterior sheet 1, sliding relative to the sheet through eyelets 6 (Page 3, Lines 5 – 6; Figure 1, Items 2, 4, 6; Gallot), and which is capable of being placed over at least one a corner of the other sheet and the sheet, parallel to the binding (Page 3, Lines 5 – 13; Gallot).

Eaton modified by Gallot does not disclose closing means for keeping the filing folder closed while the notebook pages between the anterior and the posterior sheets, the closing means including a rubber band attached to the first sheet, sliding relative to the first sheet through eyelets, and which can be placed over at least one a corner of a second of the anterior sheet and the posterior sheet, parallel to the binding. The only difference between the prior art and Applicant's invention is the closing means is on the opposite sheet where Applicant has failed to disclose criticality to the location of the

band as it would not create an unexpected result in the means of closing and fastening. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use place the band on the first sheet since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) [shifting the position of the band does not change the operation of the device].

In regards to Claims 5 & 9 & 11, as applied to Claims 1 & 2 & 4, Eaton modified by Gallot further discloses wherein the first sheet has a third flap 7 (Eaton), 16 (Gallot) and the first and third flaps are respectively located along the lower and upper edges of the first sheet (Figure 1, Item 7 – Eaton; Figures 1 – 3, Item 16 - Gallot).

2. Claims 3, 6, 8, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton in view of Gallot and Herlitz (DE 2007 07 028 U1).

In regards to Claims 3 & 6, as applied to Claims 1 & 2, Eaton modified by Gallot does not disclose wherein the binding includes a spiral, enabling the notebook pages to be stored flat against the first sheet with the flaps folded toward the interior side of the first sheet with notebook pages under the first and second flaps.

Herlitz discloses a document filing folder 10 comprising: a cover 20 (Figure 1) including an anterior sheet (Figure 2; page on left of spiral) and a posterior sheet (Figure 2; page on right of spiral), a binding 18a joining the anterior and posterior sheets (Figure 2, Item 18a); and notebook pages securely connected to the binding (Previous Attachment; Last sentence of Novelty section) wherein a first sheet of the anterior and posterior sheets includes a first flap 33 along one of lower and upper edges of the first

sheet (Figure 2, Item 33) and a second flap 32 along a lateral edge of the first sheet (Figure 2, Item 32). Furthermore the flaps are capable of retaining pages which are bound by the spiral since section 35 of the flaps are glued to one another and therefore allowing flexing for insertion of pages (Attachment, Novelty section; sheets inside the notebook are disclosed and therefore notebook pages and are able to be stored in the formed pocket due to the flexibility), wherein the flaps are adhered one on top of the other (Figure 2, Items 32, 33), toward the interior side of the first sheet, with the notebook pages capable of being held under the flaps folded towards the interior side of the first sheet (Attachment, Novelty Section; pages can be stored in the folded sections nothing is to prevent the bound papers from being inserted since the pocket is capable of holding the bound pages). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the binding of Eaton modified by Gallot with a spiral binding in order to provide a secure connection of the contents with the cover (repeated contact points between elements).

In regards to Claim 8, as applied to Claim 3, Eaton modified by Gallot and Herlitz further discloses a document filing folder with a closing means including a rubber band 4 attached to one of the anterior sheet 2 and the posterior sheet 1, sliding relative to the sheet through eyelets 6 (Page 3, Lines 5 – 6; Figure 1, Items 2, 4, 6; Gallot), and which is capable of being placed over at least one a corner of the other sheet and the sheet, parallel to the binding (Page 3, Lines 5 – 13; Gallot).

Eaton modified by Gallot and Herlitz does not disclose closing means for keeping the filing folder closed while the notebook pages between the anterior and the posterior

sheets, the closing means including a rubber band attached to the first sheet, sliding relative to the first sheet through eyelets, and which can be placed over at least one a corner of a second of the anterior sheet and the posterior sheet, parallel to the binding. The only difference between the prior art and Applicant's invention is the closing means is on the opposite sheet where Applicant has failed to disclose criticality to the location of the band as it would not create an unexpected result in the means of closing and fastening. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use place the band on the first sheet since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) [shifting the position of the band does not change the operation of the device].

In regards to Claims 10, as applied to Claims 3, Eaton modified by Gallot and Herlitz further discloses wherein the first sheet has a third flap 7 (Eaton), 16 (Gallot) and the first and third flaps are respectively located along the lower and upper edges of the first sheet (Figure 1, Item 7 – Eaton; Figures 1 – 3, Item 16 - Gallot).

In regards to Claim 12, please refer to the rejections of Claims 1, 3, 5, and 10 as the claimed subject matter of Claim 12 combines the subject matter covered in the listed claims. Furthermore the only difference being the defining of the first and second flaps being upper and lower edges and the third flap on the lateral edge. With respect to the Claim 12, Eaton discloses the first and second flaps as 6 and 7 with the third flap 8 (Figure 1, Items 6 – 8) and Gallot further defining first and second flaps as 16 and 17 with the third flap being 12 and 13 (Figure 3, Items 12, 13, 16, 17).



***Response to Arguments***


Applicant's arguments with respect to claims 1 - 11 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pradeep C. Battula whose telephone number is 571-272-2142. The examiner can normally be reached on Mon. - Thurs. & alternating Fri. 7:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Patent Examiner  
January 29, 2008

  
MONICA CARTER  
SUPERVISORY PATENT EXAMINER